



STATE OF NORTH DAKOTA

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ATTORNEY GENERAL WAYNE STENEHJEM

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Application to Limit Liability of Vendor

During the 2005 legislative session, Senate Bill 2250 was signed into law and is currently in effect. The Act carves out a small exception to the general rule that an agency may not contractually indemnify a vendor or third party.

The Act states that if a contract involves the purchase or lease of software, communication, or electronic equipment, and if the director of the office of management and budget and the attorney general determine it is in the best interest of the state, an agency may agree to limit the liability of a vendor. This determination must be in writing.

In addition, if an agency entered into a contract prior to the effective date of the Act and the contract required the agency to limit the liability of the contracting party, the person who signed that contract will be deemed to be acting within the scope of employment provided the contract is approved or ratified by the attorney general and the director of the office of management and budget.

A committee has been formed to review requests for both prospective and retrospective approval. Requesting approval from this committee should be a last resort. It is always in the best interest of the state to remove the indemnity language. By law, the committee may only approve requests to indemnify a vendor if it is in the best interest of the state, and this is rarely the case. Please work with your Assistant Attorney General or Special Assistant Attorney General to assist you in removing any requirement that the state contractually indemnify a vendor.

If you are currently in contract negotiations related to the purchase or lease of software, communication, or electronic equipment and believe you may need approval to limit the liability of the vendor, or if have previously entered into this type of a contract and believe you need to have the contract ratified, please complete SFN 54345- Application to Limit Liability of Vendor and send the completed form to Risk Management:

<http://www.state.nd.us/efrms/Doc/sfn54345.pdf>.

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APPROVED